IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 215 OF 2004

1. Shri Lovin Ferrao,
   r/o Louvela, H. No. 140,
   Dandvaddo, Sirlim,
   Salcete, Goa.

2. Smt. Joanita Pereira,
   r/o Dandvaddo, Sirlim,
   Salcete, Goa. .... Petitioners.

Versus

1. The State of Goa,
   Through the Chief Secretary,
   having office at Secretariat,
   Panaji, Goa.

2. The Under Secretary (Revenue),
   Government of Goa,
   Secretariat, Panaji, Goa.

3. The Deputy Collector/
   Land Acquisition Officer,
   Collectorate, South Goa,
   Margao, Goa.

4. Shri Filipe Neri,
   Honourable Cabinet Minister,
   Government of Goa, having office
   at Secretariat, Panaji, Goa.

5. Smt. Rosaria Fernandes,
   widow of Shri Bartolomeu Agostinho
   Fernandes, r/o H.No. 139,
   Dandvaddo, Sirlim, Salcete, Goa.

6. Shri Jessy Fernandes,
   r/o H.No. 139,
   Dandvaddo, Salcete, Goa. .... Respondents.

Mr. Girish Sardessai with Mr. L.V. Palekar, Advocates for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Mr. G. Shirodkar, Addl. Government Advocate for the Respondents No.1 to 3.

Mr. N. Sawaikar, Advocate for the Respondents No.5 and 6.

CORAM: S.A. BOBDE &
N.A. BRITTO, JJ.

DATE: 12TH JULY, 2004.

ORAL JUDGMENT: (Per Bobde, J.)

Rule returnable forthwith. Heard by consent.

2. The petitioners have challenged the Notification dated 9.5.2003 issued under Section 4-A of the Land Acquisition Act and the Notification dated 10.3.2004 under Section 4 of the Land Acquisition Act in respect of the acquisition of Survey No. 40/14 in village Dramapur, Sirlim, Salcete, Goa. The petitioner No.1 claims to be the owner of the land under a Decree dated 4.8.89 against the Comunidade of Sirlim in respect of the land. The petitioner No.2 claims to be the owner in possession of Survey No.45/2 (part) in village Dramapur.

3. The land that is sought to be acquired under the said Notification is an area of 875 sq.metres as per the Notification dated 10th March, 2004 issued by the Government of Goa. A perusal of the sketch map gives a correct picture of the situation. The proposed acquisition, which is linear, appears to be for the purpose of internal road which is meant for the benefit of about 13 houses. This internal road is intended to be connected to the National Highway No.17. On both sides of the area proposed to be acquired are various survey numbers mentioned in the Notification i.e. Survey Nos. 40, 44 and 45. Several parts of Survey No.44 are also sought to be acquired.

4. The main contention of the petitioners is that the acquisition is vitiated by malafides, in that it is at the instance of the respondent No.4 who is a Cabinet Minister in the Government of Goa. The allegation in brief is that the respondent Nos.5 and 6 i.e. the mother and son respectively are staunch supporters of the Minister and the respondent No.6 has been the polling agent of the Minister during the last Legislative Assembly elections. The petitioner's claim is that the respondent-Minister has initiated the acquisition of the said land in order to help the respondents No.5 and 6. The respondents had initiated a Civil Suit and in the Civil Suit had sought for an injunction in respect of the right of way

against the petitioners. This injunction application was dismissed on 24.8.2000. The appellate Court dismissed the appeal on 28.11.2002. The petitioners contend that in order to vindicate their stand in the Civil Suit, the respondent have, through the Respondent No.4-Minister brought about the acquisition proceedings.

5. This Court issued notice to all the respondents who have filed their affidavits. The respondent No.4-Minister has denied the fact of the respondent No.6 ever having been his polling agent. He has also denied any role in the acquisition. From the affidavit filed by the State, it appears that the land acquisition proposal was initiated by the Public Works Department in pursuance of a Panchayat Resolution dated 9.2.2003 that the land in question should be acquired.

6. Having perused the material on record, we are of view that there is no substance in the petition including the allegations against the respondent No.4-Minister. It is clear from the maps on record that the land that is proposed to be acquired under the Notification is intended to be an internal service road which would serve several survey numbers including those of the petitioners. It is also clear that the acquisition is the result of a proposal by the Village Panchayat and the Public Works Department. It so happens that the respondents

had filed a Civil Suit against the petitioners claiming a right of way over the land which is now being lost by them in the acquisition. But it must also be noted that the respondents No. 5 and 6 who are said to have caused the acquisition may also lose their land in the acquisition. It is clear from the Notification that about 240 sq.m. Of land belonging to one Bartolomeu A. Fernandes is proposed to be acquired. The respondents No.5 and 6 are admittedly the widow and son of the said Bartolomeu Fernandes.

Mr. Sardessai, learned counsel for the petitioners, contended that there is some pending dispute regarding the title of this land. However, we have referred to this fact in order to show that prima facie the respondents who are the heirs of the late Bartolomeu Fernandes might also lose land in case they are held to be the owners. In any case, the Notification clearly shows their late husband and father respectively to be the owner of part of the land that is proposed to be acquired. It is unlikely that the Respondents would promote an acquisition in which they would lose, potentially, their own land.

7. In the circumstances, we find no merit in this petition which is hereby dismissed. Rule discharged.

S. A. BOBDE, J.

N.A. BRITTO, J.

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